IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

Bail Appl..No. 5849 of 2007()

CRIME NO.247/07 OF KODUVALLY POLICE STATION, KOZHIKODE.

PETITIONER/ACCUSED

A.K.SALEEM, S/O.AHAMMED KUTTY,
AGED 40 YEARS, THORAKKATTIL HOUSE,
EKAROORL PO, UNNIKULAM.

BY ADV. SRI.P.R.SREEJITH

RESPONDENTS: COMPLAINANT/STATE

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 27/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 5849 OF 2007

Dated this the 27th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations in a crime registered, inter alia, under Secs.420 and 468 of the IPC. The crux of the allegations against the petitioner is that he produced before the R.T.O. a forged installation certificate to make it appear that speed governor is installed in a vehicle. The registered owner of the vehicle is not the petitioner. It is the case of the prosecution that the petitioner is the one who is actually managing the vehicle. He had produced a false/forged certificate purportedly issued from a company which is duly authorised to instal speed governors and issue certificates. The certificate which is purported to have been issued and which was allegedly produced by the petitioner before the authorities is not the one

issued by the person who is purported to have issued the certificate. The vehicle was not fitted with any speed governor also. It is, in these circumstances, that the Motor Vehicle authorities, after the initial verification, submitted a complaint before the police. Crime has been registered. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner only submits that the petitioner is not the one who had produced the certificate before the authorities. He is only a messenger who acted on behalf of the registered owner and his duty was only to take back the documents from the office of the Motor Vehcile authorities. The learned counsel for the petitioner therefore submits that the petitioner cannot by any stretch of imagination be mulcted with culpable liability for the forged certificate allegedly produced by or on behalf of the registered owner. The learned counsel for the petitioner further submits that, at any rate, custodial interrogation of the petitioner is not necessary.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor has placed the Case Diary before me for my perusal. I have perused the Case Diary. A serious allegation is raised that the seal of the Company has been forged

to make it appear that the certificate was issued by the said Company. The learned Public Prosecutor places reliance on the documents including the declaration filed by the petitioner which show that the petitioner is in management of the vehicle concerned. The learned Public Prosecutor submits that thorough interrogation of the petitioner is necessary to unravel the details of the crime. Such interrogation alone can bring to light the circumstances under which and the accomplices, if any, who were reasponisble for the commission of the crime. The forged seal has to be recovered. It has to be ascertained as to who, where and when had forged the said seal. In these circumstances, the learned Public Prosecutor submits that this is not, at any rate, a proper case in which the discretion under Sec.438 of the Cr.P.C. can or ought to be invoked. The petitioner may be directed to surrender before the learned Magistrate and seek regular bail, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs and having perused the Case Diary, I find merit in the opposition by the learned Public Prosecutor. I am unable to agree that there are any features in this case which would justify the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C.

Compelling reasons must be shown to exist to persuade this Court to invoke such extraordinary equitable discretion. I am unable to find any such features that would justify or prompt this Court to invoke such extraordinary equitable discretion under Sec.438 of the Cr.P.C. I agree with the learned Public Prosecutor that the petitioner must appear before the learned Magistrate and then seek regular bail in the ordinary course. Totally different considerations would, of course, apply if the petitioner comes to this Court with a proper application for regular bail.

5. With the above observations, this bail application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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//true copy// **P.S. to Judge**